Strack v. Frey Doc. 67 Att. 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE "A MILLION LITTLE PIECES" LITIGATION	No. 06-md-1771 Hon. Richard J. Holwell

AFFIDAVIT OF SCOTT C. FROST IN SUPPORT OF JOINT PETITION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF COSTS FILED BY STATMAN HARRIS & EYRICH, LLC

STATE OF ILLINOIS)
)SS:
COUNTY OF COOK)

I, Scott C. Frost, being first duly cautioned and sworn, depose and state:

1. I am a partner of the firm of Statman Harris & Eyrich, LLC. I am submitting this Affidavit in support of my firm's application for an award of attorneys' fees in connection with services rendered in the above-entitled action ("The Action") and the reimbursement of expenses incurred by my firm in the course of this litigation.

2. My firm acted as one of plaintiff's counsel in The Action. The tasks undertaken by my firm can be summarized as follows:

Our firm participated in the initial investigation of the The Action and filed a local action after completing a comprehensive due diligence investigation. The firm then spent a considerable amount of time in leading the coordination with all of the Plaintiff's counsel that have participated joiintly to formulate a working multi-tierd lead counsel representation. This involved numerous hours in coordinating with other counsel on how the work would be delegated and the best

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strategy to present a steam-lined litigation. This also involved numerous hours of time spent consulting with the Law Offices of Larry Drury, co-lead counsel in this cause, in an effort to obtain most of the Plaintiff's counsel consent to be part of a coordinated "team" of Plaintiffs.

In addition, this firm participated in consolidation matters and follow-up with MDL pleadings and alliances to better preserve continuity of the class. This included, but was not limited to, multiple draftings and presentation of lead counsel research and phone conferences. Moreover, this firm played a key role in working with lead counsel in developing a settlement concept, which included analyses regarding profits of Random House and Frey, notice and claim issues. In doing so, we reviewed the "Million Little Pieces" book as well as other pleadings to assist in developing a settlement strategy.

Furthermore, a considerable amount of time was spent on developing language with the confidentiality and/or settlement language. This included investigation and research on how the settlement claims could be paid and processed as a national settlement. This involved comparing the multiple complaints and law of the various states. The settlement resolution required continuous review of the settlement drafts and continuing contact with Plaintiff's counsel. This evaluation was done not only for Defendant, Random House, but regarding Frey as well. The settlement took numerous months and lengthy negotiation in which our firm participated therein. Furthermore, this firm participated in the appointment of lead counsel and the opposition of Taylor & Kalchiem's motion's to appoint as lead counsel.

3. The chart attached hereto as Exhibit "A" is a detailed summary indicating the amount of time spent by the partners of my firm who were involved in this litigation, and the lodestar calculation based upon my firm's current billing rates for such personnel in the final year of employment by my firm. As reflected therein, my firm expended a total of 252.45 hours on this litigation from the inception of the case to the present, with a total lodestar amount of $82,499.25.[1] Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

4. The hourly rates for the partners in my firm included in Exhibit "A" are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other class action matters in this District.

5. The chart attached hereto as Exhibit "B" is my firm's itemization of un-reimbursed expenses incurred in the total amount of $1,214.77 in connection with the prosecution of this litigation.

6. The expenses incurred in The Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred in connection with the prosecution of the litigation.

7. With respect to the standing of counsel in this case, attached hereto as Exhibit "C" is a brief biography of my firm and attorneys in my firm who were principally involved in this litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 28 day of September, 2007.

[1] The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my

Scott C. Frost

SWORN TO BEFORE ME
this 28 day of September 2007.

NOTARY PUBLIC

REBECCA M DOWLING
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
September 14, 2009

firm, which are available for inspection upon request of the Court.

EXHIBIT "A"

IN RE "*A MILLION LITTLE PIECES*" LITIGATION 06-MD-1771

BILLING

FIRM NAME: Statman Harris & Eyrich, LLC

REPORTING PERIOD: January 1, 2006 through September 25, 2007

ATTORNEY NAME	TOTAL HOURS	HOURLY RATE	TOTAL LODESTAR
CMH	43.2	325.00-445.00	$14,304.00
AJS	14.9	350.00-495.00	$5,258.50
SCF	126.5	350.00-455.00	$44,649.50
PLT	8.0	70.00-125.00	$681.00
JPH	15.4	350.00	$5,390.00
JPC	0.75	265.00	$198.75
JB	43.3	275.00	$11,907.50
BTG	0.4	275.00	$110.00
TOTAL	252.45	N/A	$82,499.25

EXHIBIT "B"

IN RE "*A MILLION LITTLE PIECES*" LITIGATION 06-MD-1771

EXPENSES

FIRM NAME: Statman Harris & Eyrich, LLC

REPORTING PERIOD: January 1, 2006 through September 25, 2007

TYPE OF EXPENSE	CUMULATIVE TOTAL
Computerized Legal Research (Westlaw, Lexis, Dialog, etc.)	$ 640.81
Court Cost & Filing Fees	$ 300.00
Court Reporters & Transcripts	$ 0.0
Photocopying	$ 36.00
Postage, Messenger & Express Mail, FedEx	$ 0.0
Professional Services (Experts, Investigators, etc.)	$ 75.00
Telephone & Fax	$ 0.0
Travel, Hotels, Meals	$ 0.0
Miscellaneous	$150.00 (Prime Zone Media) $12.96 (Purchase paperback of "A Million Little Pieces")
TOTAL	$1,214.77

EXHIBIT "C"

STATMAN, HARRIS & EYRICH, LLC

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Complex Commercial Litigation ■ Class Action Litigation ■ Financing ■ Real Estate
Complex Banking Law ■ Commercial Law ■ Corporate Acquisitions and Dispositions
General Civil Trial and Appellate Practice in Federal and State Courts ■ Restructuring
Personal Injury ■ Family Law ■ Corporate Formation ■ Reorganizations ■ Taxation
Bankruptcy ■ Civil Litigation ■ General Business ■ Intellectual Property ■ Estate Planning

SH&E OVERVIEW:

Statman, Harris & Eyrich, LLC ("SH&E") is committed to providing professional legal services to businesses and individuals in the Cincinnati, Chicago, and Dayton communities in complex legal matters The firm is made up of over 30 experienced attorneys

SH&E was founded in 2001. SH&E is a combination of two well-known law firms, Statman, Harris & Bardach, LLC and attorneys from Kepley, Gilligan & Eyrich, LLC. The firm is one of the fastest growing law firms in the State of Ohio.

Most SH&E lawyers have received the highest "preeminent" designation by Martindale-Hubbell®, the leading national rating organization for attorneys. Four of the firm's lawyers – Managing Member Alan J. Statman, Commercial Law Member Jeffrey P. Harris, Commercial Law Member Scott C. Frost and Tax Partner Howard L. Richshafer – are among the elite top 5 percent of attorneys in Ohio and Illinois to be voted *Super Lawyers*® by their peers.

SH&E utilizes the wealth of resources and experience of its partners to provide legal solutions for today's complex problems

REPRESENTATIVE CLIENTS AND TRANSACTIONS:

SH&E is the largest national provider of complex financial legal services to Fifth Third Bank In addition, SH&E represents PNC Bank, Provident Bank, Harris Bank, Brickyard Bank, LaSalle Bank, Union Savings Bank, Guardian Savings Bank and Northside Bank. Bank representation includes commercial secured loan transactions, mortgage lending, industrial revenue bonds, letters of credit, title company services, bank mergers and acquisitions, complex financial litigation, SBA loans and other services including workouts and turnarounds.

Representative transactions are provided in part in the résumés of Alan Statman and Jeffrey Harris. Additional class action litigation in which SH&E has acted as counsel is as follows:

- *In re Fannie Mae Securities Litigation*, Consolidated Civil Action No 1:04-cv-01639 (D.D.C.) The firm represents Plaintiff, on behalf of a class, suing the nation's largest provider of mortgage funds in class action litigation filed for alleged violations of federal securities laws.

- *In Re Pfizer Inc. Securities*, MDL Case No. 1688 (Multidistrict Litigation). The firm represents Plaintiffs, on behalf of a class of ERISA Plan participants, suing a prescription drug manufacturer for alleged securities fraud and breach of fiduciary duties.

- *Stacey and Susan Schacter vs. Circuit City, Inc.*, Case No. 05-CV-12456 (D.Mass.). The firm represents Plaintiffs, on behalf of a class, suing a provider of consumer electronics for alleged deceitful warranty billing practices. The case has been settled and is awaiting court approval.

- *Robert Crail vs. Best Buy Co., Inc.*, Case No 06CV227 (E.D.Ky). The firm represents Plaintiff, on behalf of a class, suing a provider of consumer electronics for alleged deceitful extended warranty practices.

- *James Giles, derivatively on behalf of Autodesk, Inc. vs. Carol A. Bartz, et al.*, Case No. C-06-7185 (N.D. Cal.). The firm represents Plaintiffs, on behalf of a class, suing officers and directors of a design software and service company for alleged violations of the Securities Exchange Act and breach of fiduciary duty in connection with the backdating of stock options

- *Patricia A Kahle vs. Litton Loan Servicing, L.P.*., Case No. 05-CV-756 (S.D. Ohio) The firm represents Plaintiff, on behalf of a class, suing a processor of mortgage loans for alleged breach of fiduciary duty relating to the theft of personal data.

■ *Jeanette Wagner vs. TracFone Wireless, Inc.*, Case No. 06CI304 (Cir Ct Ky., Boone Cty.). The firm represents Plaintiff, on behalf of a class, suing a provider of pre-paid wireless phone services for alleged deceitful sales practices. The case has a Preliminary Settlement Order pending.

■ *Teresa and Jeff Berberich vs. Cincinnati Bell Wireless, et al.*, Case No. 05-CI-304 (Cir. Ct. Ky., Kenton Cty.) The firm represents Plaintiffs, on behalf of a class, suing a provider of wireless phone services for alleged deceitful billing practices.

■ *Carol and Gerald A. Shock vs. Advantage Bank*, Case No. 05-2648 (Common Pleas, Ohio, Montgomery Cty.). The firm represents Plaintiffs, on behalf of a class, suing a banking corporation for alleged deceitful closing costs in mortgage loan transactions.

■ *Craig Cowit, et al. vs. Cellco Partnership d/b/a Verizon Wireless*, Case No. A 0505869 (Common Pleas, Ohio, Hamilton Cty.). The firm represents Plaintiffs, on behalf of a class, suing a provider of wireless phone services for alleged deceitful billing practices.

■ *In re Styrene Railway Car Litigation*, Cons. Case No. A0507105 (Common Pleas, Ohio, Hamilton Cty.) The firm represents Plaintiffs, on behalf of a class, suing transporters of a hazardous chemical that exposed thousands to styrene chemicals.

■ *In re: Million Little Pieces Litigation*, Case No MDL 1771 (Judicial Panel on Multidistrict Litigation). The firm represents Plaintiffs, a national class of consumers, suing a large publishing company for alleged deceptive business practices and violation of consumer protection acts

■ *Katherine Bender vs. Federal Family Education Loan Processing, Corp.*, Case No 07-CV-516 (S.D. Ohio) The firm represents Plaintiff, on behalf of a class, suing a loan provider for the unauthorized acquisition and usage of individual consumer reports and alleged violations of the Fair Credit Reporting Act, and trade practices acts of Ohio and other states

■ *City of Gallup, New Mexico vs. Hotels.com GP, LLC, et al.*, Case No. 07-CV-644 (D.N.M.) The firm represents Plaintiff, on behalf of a class, suing Web-based hotel booking companies for alleged violations of state and local tax laws in each Defendant's failure to remit taxes from sales of lodging occupancy pursuant to New Mexico taxing authority hotel occupancy tax codes throughout the state of New Mexico.

- *William Kasper vs. Cincinnati Bell, Inc., et al.*, Case No. A0707908 (Common Pleas, Ohio, Hamilton Cty). The firm represents Plaintiff, on behalf of a class of residential subscribers to Internet access in Ohio, suing Defendants for alleged illegal assessment of sales or use taxes on Internet access.

- *Debra Taylor vs. Unifund Corporation*, Case No. 98 C 5921 (N.D. Ill.) The firm represented a bad debt buyer in class action litigation filed seeking disgorgement of tens of millions of dollars in alleged time barred debt.

- *Peeples vs. Blatt Hasenmiller et al.* Plaintiff, Case No. 00 C 7028 (N.D. Ill.). Plaintiff, on behalf of a class, sued a debt collection law firm for alleged violations of the Fair Debt Collection Practices Act, and the Illinois Consumer Fraud and Deceptive Practices Act, for an alleged fraudulent conspiracy between it and Sears Roebuck & Co. to collect discharged debts in bankruptcy in state court replevin proceedings

- *Martin vs. Munson* Case No. 03 C 3781 (N.D. Ill.). This class action is pending in the United States District Court for the Northern District of Illinois. The Plaintiff alleged that Defendant law firm violated federal truth in lending laws, the Illinois Interest Act, and committed various torts such as the unauthorized practice of law and defamation in connection with the Defendants alleged transmission of collection letters across state lines

- *Barnett vs. Experian Information Solutions et al* (E.D. Tex.), Case No. 00 CV 175. This class action is presently pending in the United States District Court for the Eastern District of Texas. Plaintiffs claim that a (sic) debt buyer conspired with other Defendants to violate the Fair Credit Reporting Act, and the Fair Debt Collection Practices Act, by altering "dates of occurrence" and transmitting them to credit bureaus. The Plaintiffs filed claims for RICO, FCRA, and the FDCPA

- *Castady vs National Check Bureau*, (N.D. Ind.). This class action claim was brought by Plaintiffs alleging violations of RICO and the FDCPA, for alleged unfair debt collection practices under Indiana usury laws.

- *Blevins v. National Check Bureau* (S.D. Ohio). This class action involved claims under the FDCPA and the Ohio Consumer Sales Practice Act for alleged wrongful actions in state court proceedings instituted by Defendants.

- In addition to class action representation, SH&E has had several multi-million dollar verdicts and settlements.

LICENSING: Attorneys with SH&E are licensed to practice law in Ohio, Indiana, Illinois, Kentucky, New York, and Florida